



Sen. Jacqueline Y. Collins

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09700SB3523sam001

LRB097 18601 JLS 66998 a

1 AMENDMENT TO SENATE BILL 3523

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 3523 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Currency Exchange Act is amended by  
5 changing Section 3.1 as follows:

6 (205 ILCS 405/3.1) (from Ch. 17, par. 4805)

7 Sec. 3.1. Nothing in this Act shall prevent a currency  
8 exchange from rendering State or Federal income tax service;  
9 nor shall the rendering of such service be considered a  
10 violation of this Act if such service be rendered either by the  
11 proprietor, any of his employees, or a licensed, regulated tax  
12 service approved by the Internal Revenue Service. For the  
13 purpose of this Section, "tax service" does not mean to make or  
14 offer to make a refund anticipation loan as defined by the Tax  
15 Refund Anticipation Loan Reform ~~Disclosure~~ Act.

16 (Source: P.A. 97-315, eff. 1-1-12.)

1           Section 10. The Tax Refund Anticipation Loan Disclosure Act  
2 is amended by changing Sections 1, 5, 10, and 15 and by adding  
3 Sections 20, 25, 30, 35, and 40 as follows:

4           (815 ILCS 177/1)

5           Sec. 1. Short title. This Act may be cited as the Tax  
6 Refund Anticipation Loan Reform ~~Disclosure~~ Act.

7           (Source: P.A. 92-664, eff. 1-1-03.)

8           (815 ILCS 177/5)

9           Sec. 5. Definitions. The following definitions apply in  
10 this Act:

11           "Consumer" means any natural person who, singly or jointly  
12 with another consumer, is solicited for, applies for, or  
13 receives the proceeds of a refund anticipation loan or refund  
14 anticipation check.

15           "Creditor" means any person who makes a refund anticipation  
16 loan or who takes an assignment of a refund anticipation loan.

17           "Facilitator" means a person who individually or in  
18 conjunction or cooperation with another person: (i) solicits  
19 the execution of ~~makes a refund anticipation loan,~~ processes,  
20 receives, or accepts ~~for delivery~~ an application or agreement  
21 for a refund anticipation loan or refund anticipation check;  
22 (ii) services or collects upon, ~~issues a check in payment of~~  
23 refund anticipation loan or refund anticipation check;

1 ~~proceeds,~~ or (iii) in any other manner facilitates ~~acts to~~  
2 ~~allow~~ the making of a refund anticipation loan or refund  
3 anticipation check. If there is no third party facilitator  
4 because a creditor directly solicits the execution of,  
5 receives, or accepts an application or agreement for a refund  
6 anticipation loan or refund anticipation check, that creditor  
7 shall be considered a facilitator. "Facilitator" does not  
8 include a bank, savings bank, savings and loan association, or  
9 credit union, ~~or licensee under the Consumer Installment Loan~~  
10 ~~Act~~ operating under the laws of the United States or this State  
11 and does not include any person who acts solely as an  
12 intermediary and does not deal with the public in the making of  
13 the refund anticipation loan.

14 "Person" means an individual, a firm, a partnership, an  
15 association, a corporation, or another entity. "Person" does  
16 not, however, mean a bank, savings bank, savings and loan  
17 association, or credit union operating under the laws of the  
18 United States or this State.

19 "Refund anticipation check" means a check, stored value  
20 card, or other payment mechanism: (i) representing the proceeds  
21 of the consumer's tax refund; (ii) which was issued by a  
22 depository institution or other person that received a direct  
23 deposit of the consumer's tax refund or tax credits; and (iii)  
24 for which the consumer has paid a fee or other consideration  
25 for such payment mechanism.

26 ~~"Borrower" means a person who receives the proceeds of a~~

1 ~~refund anticipation loan.~~

2 "Refund anticipation loan" means a loan that is secured by  
3 or that the creditor arranges ~~arranged~~ to be repaid directly or  
4 indirectly from the proceeds of the consumer's ~~a borrower's~~  
5 income tax refund or tax credits ~~refunds~~. "Refund anticipation  
6 loan" also includes any sale, assignment, or purchase of a  
7 consumer's tax refund at a discount or for a fee, whether or  
8 not the consumer is required to repay the buyer or assignee if  
9 the Internal Revenue Service denies or reduces the consumer's  
10 tax refund.

11 "Refund anticipation loan fee" means the charges, fees, or  
12 other consideration charged or imposed directly or indirectly  
13 by the creditor ~~facilitator~~ for the making of or in connection  
14 with a refund anticipation loan. This term includes any charge,  
15 fee, or other consideration for a deposit account, if the  
16 deposit account is used for receipt of the consumer's tax  
17 refund to repay the amount owed on the loan. ~~A "refund~~  
18 ~~anticipation loan fee" does not include charges, fees, or other~~  
19 ~~consideration charged or imposed in the ordinary course of~~  
20 ~~business by a facilitator for services that do not result in~~  
21 ~~the making of a loan, including fees for tax return preparation~~  
22 ~~and fees for electronic filing of tax returns.~~

23 "Refund anticipation loan interest rate" means the  
24 interest rate for a refund anticipation loan calculated as  
25 follows: the total amount of refund anticipation loan fees  
26 divided by the loan amount (minus any loan fees), then divided

1 by the number of days in the loan term, then multiplied by 365  
2 and expressed as a percentage. The total amount of the refund  
3 anticipation loan fee used in this calculation shall include  
4 all refund anticipation loan fees as defined in this Section.  
5 If a deposit account is established or maintained in whole or  
6 in part for the purpose of receiving the consumer's tax refund  
7 to repay the amount owed on a refund anticipation loan: (i) the  
8 maturity of the loan for the purpose of determining the refund  
9 anticipation loan interest rate shall be assumed to be the  
10 estimated date when the tax refund will be deposited in the  
11 deposit account; and (ii) any fee charged to the consumer for  
12 such deposit account shall be considered a loan fee and shall  
13 be included in the calculation of the refund anticipation loan  
14 interest rate. If no deposit account is established or  
15 maintained for the repayment of the loan, the maturity of the  
16 loan shall be assumed to be the estimated date when the tax  
17 refund is received by the creditor.

18 (Source: P.A. 92-664, eff. 1-1-03.)

19 (815 ILCS 177/10)

20 Sec. 10. Disclosure requirements. At the time a consumer  
21 ~~borrower~~ applies for a refund anticipation loan or check, a  
22 facilitator shall disclose to the consumer ~~borrower~~ on a  
23 document that is separate from the ~~loan~~ application:

24 (1) the fee for the refund anticipation loan or refund  
25 anticipation check fee schedule;

1           (1.5) for refund anticipation loans, disclosure of the  
2           refund anticipation loan interest rate. The refund  
3           anticipation loan interest rate shall be calculated as set  
4           forth in Section 5 ~~the Annual Percentage Rate utilizing a~~  
5           ~~10 day time period;~~

6           (2) the estimated fee for preparing and electronically  
7           filing a tax return;

8           (2.5) the total cost to the consumer ~~borrower~~ for  
9           utilizing a refund anticipation loan;

10          (3) the estimated date that the loan proceeds will be  
11          paid to the consumer ~~borrower~~ if the loan is approved;

12          (4) that the consumer ~~borrower~~ is responsible for  
13          repayment of the loan and related fees in the event the tax  
14          refund is not paid or not paid in full; and

15          (5) the availability of electronic filing for the  
16          income tax return of the consumer ~~borrower~~ and the average  
17          time announced by the federal Internal Revenue Service  
18          within which the consumer ~~borrower~~ can expect to receive a  
19          refund if the consumer's ~~borrower's~~ return is filed  
20          electronically and the consumer ~~borrower~~ does not obtain a  
21          refund anticipation loan.

22          (Source: P.A. 92-664, eff. 1-1-03; 93-287, eff. 1-1-04.)

23           (815 ILCS 177/15)

24           Sec. 15. Posting of fee schedule and disclosures. Penalty.

25           (a) A facilitator shall display a schedule showing the

1 current fees for refund anticipation loans or refund  
2 anticipation checks facilitated at the office.

3 (b) A facilitator shall display on each fee schedule  
4 examples of the refund anticipation loan interest rates for  
5 refund anticipation loans of at least 5 different amounts, such  
6 as \$300, \$500, \$1,000, \$1,500, \$2,000, and \$5,000. The refund  
7 anticipation loan interest rate shall be calculated as set  
8 forth in Section 5 of this Act.

9 (c) A facilitator shall also prominently display on each  
10 fee schedule: (i) a legend, centered, in bold, capital letters,  
11 and in one-inch letters stating: "NOTICE CONCERNING REFUND  
12 ANTICIPATION LOANS" and (ii) the following verbatim statement:  
13 "When you take out a refund anticipation loan, you are  
14 borrowing money against your tax refund. If your tax refund is  
15 less than expected, you will still owe the entire amount of the  
16 loan. If your refund is delayed, you may have to pay additional  
17 costs. YOU CAN GET YOUR REFUND IN 8 TO 15 DAYS WITHOUT PAYING  
18 ANY EXTRA FEES AND TAKING OUT A LOAN. You can have your tax  
19 return filed electronically and your refund direct deposited  
20 into your own financial institution account without obtaining a  
21 loan or paying fees for an extra product."

22 (d) The postings required by this Section shall be made in  
23 no less than 28-point type on a document measuring no less than  
24 16 inches by 20 inches. The postings required by this Section  
25 shall be displayed in a prominent location at each office where  
26 the facilitator is facilitating refund anticipation loans.

1       (e) A facilitator may not facilitate a refund anticipation  
2 loan or refund anticipation check unless (i) the disclosures  
3 required by this Section are displayed and (ii) the fee  
4 actually charged for the refund anticipation loan or refund  
5 anticipation check is the same as the fee displayed on the  
6 schedule.

7       ~~Any person who violates this Act is guilty of a petty~~  
8 ~~offense and shall be fined \$500 for each offense. In addition,~~  
9 ~~a facilitator who violates this Act shall be liable to any~~  
10 ~~aggrieved borrower in an amount equal to 3 times the refund~~  
11 ~~anticipation loan fee, plus a reasonable attorney's fee, in a~~  
12 ~~civil action brought in the circuit court by the aggrieved~~  
13 ~~borrower or by the Attorney General on behalf of the aggrieved~~  
14 ~~borrower.~~

15       (Source: P.A. 92-664, eff. 1-1-03.)

16       (815 ILCS 177/20 new)

17       Sec. 20. Advertising and marketing.

18       (a) A facilitator may not market or advertise a refund  
19 anticipation loan without including this language verbatim:

20       "(Name of product) is a loan. You can get your refund in 8  
21 to 15 days without a loan or extra fees if you use e-file and  
22 direct deposit."

23       For print advertisements, this information must be printed  
24 in type size one-half as large as the largest type size in the  
25 advertisement. For radio and television advertisements, this



1 information must receive at least 7 seconds of airtime.

2 (b) A facilitator may not market or advertise a refund  
3 anticipation check without including this language verbatim:

4 "The (name of product) costs (fee for RAC). You can get  
5 your refund in the same amount of time without this fee if you  
6 use e-file and direct deposit."

7 For print advertisements, this information must be in type  
8 size one-half as large as the largest type size in the  
9 advertisement. For radio and television advertisements, this  
10 information must receive at least 7 seconds of airtime.

11 (815 ILCS 177/25 new)

12 Sec. 25. Prohibited activities. No person, including any  
13 officer, agent, employee, or representative, shall:

14 (a) Charge or impose any fee, charge, or other  
15 consideration in the making or facilitating of a refund  
16 anticipation loan or refund anticipation check apart from the  
17 fee charged by the creditor or financial institution that  
18 provides the loan or check. This prohibition does not include  
19 any charge or fee imposed by the facilitator to all of its  
20 customers, such as fees for tax return preparation, if the same  
21 fee in the same amount is charged to the customers who do not  
22 receive refund anticipation loans, refund anticipation checks,  
23 or any other tax related financial product.

24 (b) Fail to comply with any provision of this Act.

25 (c) Directly or indirectly arrange for any third party to

1 charge any interest, fee, or charge related to a refund  
2 anticipation loan or refund anticipation check, other than the  
3 refund anticipation loan or refund anticipation check fee  
4 imposed by the creditor, including but not limited to: (i)  
5 charges for insurance; (ii) attorneys fees or other collection  
6 costs; or (iii) check cashing.

7 (d) Include any of the following provisions in any document  
8 provided or signed in connection with a refund anticipation  
9 loan or refund anticipation check, including the loan  
10 application or agreement:

11 (i) A hold harmless clause;

12 (ii) A waiver of the right to a jury trial, if  
13 applicable, in any action brought by or against the  
14 consumer;

15 (iii) Any assignment of wages or of other compensation  
16 for services;

17 (iv) A provision in which the consumer agrees not to  
18 assert any claim or defense arising out of the contract, or  
19 to seek any remedies pursuant to Section 35 of this Act;

20 (v) A waiver of any provision of this Act. Any such  
21 waiver shall be deemed null, void, and of no effect;

22 (vi) A waiver of the right to injunctive, declaratory,  
23 or other equitable relief; or

24 (vii) A provision requiring that any aspect of a  
25 resolution of a dispute between the parties to the  
26 agreement be kept confidential. This provision shall not

1 affect the right of the parties to agree that certain  
2 specified information is a trade secret or otherwise  
3 confidential, or to later agree, after the dispute arises,  
4 to keep a resolution confidential.

5 (e) Take or arrange for a creditor to take a security  
6 interest in any property of the consumer other than the  
7 proceeds of the consumer's tax refund to secure payment of a  
8 refund anticipation loan.

9 (f) Directly or indirectly, individually or in conjunction  
10 or cooperation with another person, engage in the collection of  
11 an outstanding or delinquent refund anticipation loan for any  
12 creditor or assignee, including soliciting the execution of,  
13 processing, receiving, or accepting an application or  
14 agreement for a refund anticipation loan or refund anticipation  
15 check that contains a provision permitting the creditor to  
16 repay, by offset or other means, an outstanding or delinquent  
17 refund anticipation loan for that creditor or any creditor from  
18 the proceeds of the consumer's tax refund.

19 (g) Facilitate any loan that is secured by or that the  
20 creditor arranges to be repaid directly from the proceeds of  
21 the consumer's State tax refund from the Illinois State  
22 Treasury.

23 (815 ILCS 177/30 new)

24 Sec. 30. Rate limits for non-bank refund anticipation  
25 loans.

1       (a) No person shall make or facilitate a refund  
2 anticipation loan for which the refund anticipation loan  
3 interest rate is greater than 36% per annum. The refund  
4 anticipation loan interest rate shall be calculated as set  
5 forth in Section 5. Any refund anticipation loan for which the  
6 refund anticipation loan interest rate exceeds 36% per annum  
7 shall be void ab initio.

8       (b) This Section does not apply to persons facilitating for  
9 or doing business as a bank, savings bank, savings and loan  
10 association, or credit union chartered under the laws of the  
11 United States or this State.

12       (815 ILCS 177/35 new)

13       Sec. 35. Applicability to certain entities. No obligation  
14 or prohibition imposed upon a creditor, a person, or a  
15 facilitator by this Act shall apply to a bank, savings bank,  
16 savings and loan association, or credit union operating under  
17 the laws of the United States or this State.

18       (815 ILCS 177/40 new)

19       Sec. 40. Violation. A violation of this Act constitutes an  
20 unlawful practice under the Consumer Fraud and Deceptive  
21 Business Practices Act.

22       Section 15. The Consumer Fraud and Deceptive Business  
23 Practices Act is amended by adding Section 2NNN as follows:

1 (815 ILCS 505/2NNN new)

2 Sec. 2NNN. Violations of the Tax Refund Anticipation Loan  
3 Reform Act. Any person who violates the Tax Refund Anticipation  
4 Loan Reform Act commits an unlawful practice within the meaning  
5 of this Act.

6 Section 97. Severability. The provisions of this Act are  
7 severable under Section 1.31 of the Statute on Statutes.

8 Section 99. Effective date. This Act takes effect upon  
9 becoming law.".